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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/583,259
Filing Date: June 16, 2006
Appellant(s): MAGNUSSON ET AL.

John R. Lastova
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/24/2010 appealing from the Office action mailed 02/23/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 24-33, 35-44, 46, 50, and 51.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

WO/02104054	D'Argence et al.	12-2002
20050128989	Bhagwat et al.	06-2005
6657981	Lee et al.	12-2003
20030207688	Nikkelen	11-2003
20060116170	Brahmbhatt et al.	06-2006
20050124344	Laroia et al.	06-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26, 28, 29, 32, 33, 35-37, 39, 40, 43, 44, and 46, are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Argence et al. (International Publication No. WO 02104054) in view of Bhagwat et al. (US Publication No. 20050128989).

As to **claims 24, 35, and 46**, D'Argence teaches a method for managing radio resources for providing wireless access to a communication system to a number of terminals, wherein the communication system comprises a first access network using a first access technology and a second access network using at least one second access technology different from the first access technology (pg. 1, lines 8-17), wherein the method comprises the steps of: receiving access relevant information (pg. 4, lines 1-11) from the first access network and the second access network (fig. 5 and pg. 15 lines 22-24), comparing the received

access relevant information extracted from messages sent within the first access network to access relevant information received from the second access network (pg. 17, lines 4-15); wherein the access relevant information is expressed in comparable quantities (cell measurements) (pg. 17, lines 4- 25) and determining which access network provides a best connection (quality of service to a terminal and which access network should be accessed based on at least a result of the comparison of the received access relevant information extracted from messages sent within the first access network to the access relevant information received from the at least one second access network (pg. 17, lines 14-18 and pg. 19, lines 1-3). Also, discloses a selection manager (fig. 1, CRRM #18). However, D'Argence fails to teach wherein the access relevant information comprises information extracted by sniffing messages sent within the first access network that describes a state of at least one of the access networks based on signal measurements and/or load measurements; wherein the messages are sniffed by a listening agent and are directed to an entity in the first access network other than the listening agent, and wherein sniffing a message includes reading a source address, a destination address, and a data payload of the sniffed message without influencing the sniffed message; and the access network which provides a best connection to a terminal.

But, Bhagwat teaches wherein the access relevant information (address information) comprises information extracted by sniffing messages sent within the first access network that describes a state (wireless activity) of at least one of

the access networks based on signal measurements and/or load measurements (RSSI) (pg. 5, pp0072, and pp0073); wherein the messages are sniffed by a listening agent (sniffer, fig. 1, #122) and are directed to a entity in the first access network other than the listening agent (fig. 1), and wherein sniffing a message includes reading a source address (transmitter address), a destination address (receiver address), and a data payload of the sniffed message without influencing the sniffed message (pg. 5, pp0073, and pg. 6, pp0076). Thus it would have been obvious to one of ordinary skill in the art at time the invention was made to combine the teachings of D'Argence with the method of sniffing information in Bhagwat's system to achieve the goal of removing only the desired configuration information from a packet in a communication system.

As to claims 25 and 36, D'Argence teaches wherein the first access network is a wireless local area network (pg. 3, lines 11-13).

As to claims 26 and 37, D'Argence teaches wherein at least part of the messages sent within the first access network (fig. 1, #6) are messages sent between access points (fig. 1, #10) and (pg. 7, lines 8-11).

As to claim 28 and 39, D'Argence teaches wherein the extracted access relevant information comprises an identification of a terminal and an identification of an access point that the terminal has associated with (pg. 19, lines 4-10).

As to claims 29 and 40, D'Argence in view of Bhagwat teaches wherein at least part of the access relevant information is extracted by sniffing user plane traffic for at least one terminal (pg. 13, lines 24-29), which access relevant

information is used to calculate traffic volume and/or throughput of the at least one terminal (pg. 19, lines 1-3).

As to **claims 32 and 43**, D'Argence teaches wherein at least part of the messages sent within the first access network are sent between at least one terminal and an access point (pg. 1, lines 1-7).

As to **claims 33 and 44**, D'Argence in view of Bhagwat teaches wherein at least part of the access relevant information extracted by sniffing messages sent within the first access network indicates how frequently a channel was busy, which indicates a load of the channel (pg. 4, lines 10-11).

Claims 27 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Argence et al (International Publication No. WO 02104054) in view of Bhagwat et al. (US Publication No. 20050128989) and further in view of Lee et al (US Patent No. 6657981).

As to **claims 27 and 38**, D'Argence in view of Bhagwat teaches the limitations of claim 26 and 37 as discussed above. However they fail to teach defining the message by the Inter-Access Point Protocol (IAPP). Lee teaches an (IAPP) manager used to transfer handover information between access points in a communication network (fig. 5). Thus it would have been obvious to one of ordinary skill in the art at time the invention was made to combine the teachings of D'Argence in view of Bhagwat with the teachings of Lee to achieve the goal of

efficiently and accurately transferring information within access points in a wireless communication system.

Claims 30 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Argence et al (International Publication No. WO 02104054) in view of Bhagwat et al. (US Publication No. 20050128989) and further in view of Nikkelen (US Publication No. 20030207688).

As to **claims 30 and 41**, D'Argence in view of Bhagwat teaches the limitations of claim 24 and 35 as discussed above. However they both fail to teach wherein at least part of the messages sent within the first access network are sent between access points and a router. Nikkelen teaches a core network node used to communicate from the core network through the first type of mobile radio system which includes a radio access network and a base station (fig. 2, #20 and #26). Thus it would have been obvious to one of ordinary skill in the art at time the invention was made to combine the teachings of D'Argence in view of Bhagwat with the teachings of Nikkelen to achieve a perfect link to transfer data between components of a wireless communication system.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Argence et al (International Publication No. WO 02104054) in view of Bhagwat

et al. (US Publication No. 20050128989) and further in view of Brahmbhatt et al (US Publication No. 20060116170).

As to **claim 31**, D'Argence in view of Bhagwat teaches the limitations of claim 24 as discussed above. However they both fail to teach defining the message by the Light Weight Access Point Protocol (LWAPP). Brahmbhatt teaches using (LWAPP) specification may determine which access point to associate with, also the messages includes a network ID(pg. 6, pp0052, lines 1-6). Thus it would have been obvious to one of ordinary skill in the art at time the invention was made to combine the teachings of D'Argence in view of Bhagwat with the teachings of Brahmbhatt to achieve the goal of efficiently and accurately transferring information within access points in a wireless communication system.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Argence et al (International Publication No. WO 02104054) in view of Bhagwat et al. (US Publication No. 20050128989) and Nikkelen (US Publication No. 20030207688), and further in view of Brahmbhatt et al (US Publication No. 20060116170).

As to **claim 42**, D'Argence in view of Bhagwat and Nikkelen teaches the limitations of claim 41 as discussed above. However they fail to teach defining the message by the Light Weight Access Point Protocol (LWAPP). Brahmbhatt

teaches using (LWAPP) specification may determine which access point to associate with, also the messages includes a network ID(pg. 6, pp0052, lines 1-6). Thus it would have been obvious to one of ordinary skill in the art at time the invention was made to combine the teachings of D'Argence in view of Bhagwat and Nikkelen with the teachings of Brahmhatt to achieve the goal of efficiently and accurately transferring information within access points in a wireless communication system.

Claims 50 and 51, are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Argence et al (International Publication No. WO/02104054) in view of Bhagwat et al. (US Publication No. 20050128989) and further in view of Laroia et al. (US Publication No. 20050124344).

As to claims 50 and 51, D'Argence in view of Bhagwat teaches the limitations of claims 24 and 35 as discussed above. However they both fail to teach wherein when the access relevant information (signal strength) is expressed in non-comparable quantities (signal strength from different sector) (pg. 5, pp0049), the method further comprises converting (deriving) access relevant information from at least one of the first and second access networks to an access-independent quantity (information derived based on beacon signal) (pg. 11, pp0086) before performing the comparison of the access relevant information extracted from the first access network to the access relevant

information received from the at least one second access network (pg. 7, pp0059). Thus it would have been obvious to one of ordinary skill in the art at time the invention was made to combine the teachings of D'Argence in view of Bhagwat with the teachings of Laroia to achieve the goal of efficiently and accurately manipulating information data from multiple communication systems to transfer information within the optimum network in a wireless communication system.

(10) Response to Argument

REJECTION UNDER 35 USC § 103

I. Appellant's argument with respect to the combination and/or improper combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat et al. (US Publication No. 20050128989) on claims 24, 35, and 46.

In regards to claims 24, 35, and 46, Appellant argues that the prior art references (D'Argence et al. and Bhagwat et al.) fails to disclose or suggest at least in part "...wherein the access relevant information comprises information extracted by sniffing messages sent within the first access network that describes a state of at least one of the access networks based on signal measurements and/or load measurements;

wherein the messages are sniffed by a listening agent and are directed to an entity in the first access network other than the listening agent, and wherein sniffing a message includes reading a source address, a destination address, and a data payload of the sniffed message without influencing the sniffed message..."

Appellant arguments particularly focused on the process or method of generating or acquiring information i.e. "sniffing of the relevant access information". Appellant further argues that the combination of the prior art references (D'Argence et al. and Bhagwat et al.) is improper.

In response, the Examiner respectfully disagrees with Appellant's arguments. **In summary**, based on the Examiner's understanding and given the claimed limitation its' broadest reasonable interpretations with respect to the independent claims, **the Primary prior art reference teaches** the limitations wherein two different access networks sends or transmit relevant access information (e.g. signal quality or strength) to a selection manager and selecting the best connection access network based on the comparison of the received relevant access information (fig. 1, CRRM, fig. 5, pg. 15, pg. 17). However, **the Primary prior art reference failed to teach** the process or method wherein the "relevant access information" is "sniffed" (i.e. read or collected) from a message within the access network (i.e. the message sent between the mobile terminal and the access network). But, **the secondary prior art reference (Bhagwat et al.) teaches a sniffer**, which sniffs wireless activities (i.e. communication between a

terminal and its' access network), and measures or determine the signal strength (relevant access information) (pp0151-pp0153, fig. 1, #122, pg. 5, pp0072-pp0076).

Thus, the Examiner concluded that it would have been obvious to combine the teachings of the **known Device (system)** of D'Argence et al with the **Known Technique of "sniffing"** i.e. method of collecting information (relevant access information) as taught by Bhagwat et al. to achieve the goal of removing only the desired configuration information from a packet in a communication system. In addition, it would have been obvious for one of ordinary skill in the art at time invention was made to modify the **known Device (system)** of D'Argence et al with the **Known Technique of "sniffing"** as taught by Bhagwat et al. to unobtrusively detect and/or capture relevant information data without disrupting the current communication transmission in a communication system.

Therefore, based at least on the discussions as stated above and the additionally clarified rationale, most of the Appellant's arguments directed to improper combination of the prior art references are invalid.

Furthermore, Appellant agreed and/or stated that the term "sniffing" is well known, however it's only useful for security purposes.

In response, Sniffing is merely a known method or a known technique of unobtrusively reading capturing or collecting and/or extracting particular information data from another message or information data. Thus, Appellant's argument that sniffing

is and/or can only be used for security purposes is invalid and inaccurate. Referring to Bhagwat et al. pp0074, the sniffer purposely used for collecting information, this information can therefore be sent to any other server or device for any desired purpose.

II. Appellant's argument with respect to the combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat et al. (US Publication No. 20050128989) on claims 29, and 40.

In regards to claims 29 and 40, Appellant argues that prior art references fails to teach the limitation "wherein at least part of the access relevant information is extracted by sniffing user plane traffic for at least one terminal, which access relevant information is used to calculate traffic volume and/or throughput of the at least one terminal."

In response the Examiner respectfully disagrees with Appellant's arguments. As already discussed in the final office action, Claim 29, is rejected by D'Argence et al. in view of Bhagwat et al. Therefore, since claim 29 depends on the independent claim 24 which already discussed the limitation "extraction by sniffing" as was addressed in the final office action and further explained above.

III. Appellant's argument with respect to the improper combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat

et al. (US Publication No. 20050128989) and Lee et al. (US Patent No. 6657981) on claims 27 and 38.

In response, the Examiner respectfully disagrees with Appellant's argument, based at least on similar response as presented in dependent claims 24, 35, and 46 above.

IV. Appellant's argument with respect to the improper combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat et al. (US Publication No. 20050128989) and Nikkelen (US Publication No. 20030207688) on claims 30 and 41.

In response, the Examiner respectfully disagrees with Appellant's argument, based at least on similar response as presented in dependent claims 24, 35, and 46 above.

V. Appellant's argument with respect to the improper combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat et al. (US Publication No. 20050128989) and Brahmbhatt (US Publication No. 20060116170) on claim 31.

In response, the Examiner respectfully disagrees with Appellant's argument, based at least on similar response as presented in dependent claims 24, 35, and 46 above.

VI. Appellant's argument with respect to the improper combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat et al. (US Publication No. 20050128989) and Brahmabhatt et al. (US Publication No. 20060116170) and Nikkelen (US Publication No. 20030207688) on claim 42.

In response, the Examiner respectfully disagrees with Appellant's argument, based at least on similar response as presented in dependent claims 24, 35, and 46 above.

VII. Appellant's argument with respect to the improper combination of D'Argence et al. (International Publication No. WO/02104054) and Bhagwat et al. (US Publication No. 20050128989) and Laroia et al. (US Publication No. 20050124344) on claims 50 and 51.

In regards to claims 50 and 51, Appellant argues that the prior art references (D'Argence et al. in view of Bhagwat et al. and Laroia et al.) fails to disclose or suggest

at least in part "wherein when the access relevant information is expressed in non-comparable quantities, the method further comprises converting access relevant information from at least one of the first and second access networks to an access-independent quantity before performing the comparison of the access relevant information extracted from the first access network to the access relevant information received from the at least one second access network".

Appellant further specifically argued that the prior art reference Laroia et al. fails to teach a "non-comparable quantities", Appellant also stated that "the Examiner substitute a different word "derived" for the claimed converting, but that substitution is unreasonable".

In response the Examiner respectfully disagrees with Appellant's arguments. The claim does not uniquely and particularly define the term "converting non-comparable quantities" so as to distinguish from the applied prior art. During patent examination, the claims must be given their broadest reasonable interpretation. See also MPEP §2111. The term "converting non-comparable quantities" is broadly claimed, therefore, broadly interpreted. Broadly interpreted, "converting non-comparable quantities" is fairly characterized as deriving information based on signal from different sectors, on different broadcast channels or different carrier frequencies as discussed in Laroia et al. pg. 5, pg. 7, and pg. 11.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/OMONIYI A OBAYANJU/

Examiner, Art Unit 2617

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